

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7996 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MURTUJA @ JOKHAM JUMMABHAI MANIYAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 24th August, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section-3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act. Four offences punishable under the Bombay Prohibition Act are registered against the petitioner during the period from 14th June, 1998 to 6th July, 1998. One of them is pending trial, and remaining three are pending investigation. In each of the said cases, the petitioner was found to be in possession of the country liquor. Besides, two witnesses have given statements in respect of the anti-social activities carried on by the petitioner.

The only ground on which the impugned order of detention is challenged is that in each of the above referred offences registered against the petitioner, the samples of the liquor allegedly recovered from the petitioner were sent to the Forensic Science Laboratory for chemical examination. However, the reports of the said Laboratory are not furnished to the petitioner. Under the representation made on 15th September, 1998, the petitioner had demanded such copies, inspite of the same, the petitioner has not been furnished with the said reports. It is contended that the Detaining Authority while recording his subjective satisfaction had not relied upon the reports of the Chemical Analyst and the same, therefore, was not required to be furnished to the petitioner. In the matter of RANVIRSINH KALYANSINH (Special Civil Application No. 7490/98, decided on 12th July, 1999), I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory /Chemical Analyst is a vital document, without which, the detenu may not be able to make any effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of the Detaining Authority that on the date of detention, such reports were yet not available. Besides, even after the petitioner's demand vide his representation dated 15th September, 1998, such reports are not furnished to the petitioner. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is unwarranted.

The petition is, therefore, allowed. The order

dated 24th August, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI